

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

Jane Doe, for herself and as next  
friend to her minor child, Minor  
Doe,

Case No. 24-10760

Plaintiffs,

Judith E. Levy  
United States District Judge

v.

Mag. Judge Kimberly G. Altman

Southfield Public Schools, *et al.*,

Defendants.

\_\_\_\_\_/

**ORDER DENYING PLAINTIFFS' MOTION TO STRIKE  
DEFENDANT[']S ANSWER TO PLAINTIFFS['] COMPLAINT  
AND ENTER DEFAULT [32], AND GRANTING PLAINTIFFS'  
MOTION FOR RECONSIDERATION [37]**

Before the Court is Plaintiffs' motion to strike Defendants' answer to Plaintiffs' complaint and enter default (ECF No. 32) and Plaintiffs' motion for reconsideration. (ECF No. 37.)

Plaintiffs filed the complaint on March 25, 2024. (ECF No. 1.) On March 29, 2024, summonses were issued for Defendants Southfield Public Schools, Southfield Public Schools Board of Education, Jennifer Green, Yvette Ware-DeVaull, Talisha Belk, Jillian Holloway, and Darrell

B. Joyce. (ECF No. 3.) A summons for Ashanti Bland was not issued until May 8, 2024. (ECF No. 12.) Plaintiffs entered a certificate of service on May 2, 2024, indicating that Southfield Public Schools, Southfield Public Schools Board of Education, Jennifer Green, Yvette Ware-DeVaull, Talisha Belk, Jillian Holloway, and Darrell B. Joyce were served on April 5, 2024. (ECF No. 9.) Those Defendants were required to file an answer by April 26, 2024. Fed. R. Civ. P. 12(a)(1)(A)(i).

On May 8, 2024, the Court entered an order for Plaintiffs to show cause why the matter should not be dismissed for failure to prosecute. (ECF No. 11.) At that time, none of the Defendants had filed an answer. Later that same day, all Defendants filed an answer. (ECF No. 14.) Also on that day, Plaintiffs filed requests for a Clerk's entry of default as to all Defendants (ECF Nos. 15–22), and these requests were denied because Defendants had filed an answer by that time. (ECF No. 23.) The Court vacated its order to show cause on May 14, 2024. (ECF No. 24.)

Plaintiffs request that the Court strike Defendants' answer and enter a default in this case. (ECF No. 32.) This motion is denied. While Defendants' answer was untimely, district courts have discretion to accept "the filing of an answer that would otherwise be untimely." *United*

*States v. Petroff-Kline*, 557 F.3d 285, 293 (6th Cir. 2009) (quoting *Gutting v. Falstaff Brewing Corp.*, 710 F.2d 1309, 1312 (8th Cir. 1983)). Further, Defendants made an appearance in this case and are actively participating in litigation. Thus, the Court will not strike the answer nor enter a default.

Plaintiffs also request, “if the Court finds [default] to be too severe, [that the Court] require Defendants to pay Plaintiffs’ costs for the undue delay.” (ECF No. 32, PageID.394; *see also id.* at PageID.400 (requesting “the Court order Defendants to pay Plaintiffs’ fees and costs for service of process, or other remedy the Court deem just and appropriate as a remedy for Defendants’ failure to timely answer”).) Plaintiffs have not explained how the costs for the delay of 12 days are related to Plaintiffs’ fees and costs for service of process, which they would have had to undertake in any event. The Court declines to award the requested fees and costs at this time.

Finally, Plaintiffs filed a motion for reconsideration of the Court’s order to strike. (ECF No. 37.) Plaintiffs are correct that they met the deadline to amend the complaint as a matter of course. Accordingly, the motion is granted.

For the reasons set forth above, Plaintiffs' motion to strike Defendants' answer and enter default (ECF No. 32) is DENIED, and Plaintiffs' motion for reconsideration (ECF No. 37) is GRANTED. The amended complaint (ECF No. 33) is no longer stricken.

IT IS SO ORDERED.

Dated: May 31, 2024  
Ann Arbor, Michigan

s/Judith E. Levy  
JUDITH E. LEVY  
United States District Judge

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing document was served upon counsel of record and any unrepresented parties via the Court's ECF System to their respective email or first-class U.S. mail addresses disclosed on the Notice of Electronic Filing on May 31, 2024.

s/William Barkholz  
WILLIAM BARKHOLZ  
Case Manager